

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

TEXTRON INNOVATIONS INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C. A. No. 05-486 (GMS)
	)	
THE TORO COMPANY,	)	
	)	
Defendant.	)	

**DECLARATION OF DWAIN BERGER**

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*Attorneys for Defendant  
The Toro Company*

Dated: August 16, 2005

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

TEXTRON INNOVATIONS, INC.,

Plaintiff,

**V.**

THE TORO COMPANY,

Defendant.

CIVIL ACTION NO. 05-486 (GMS)

**DECLARATION OF DWAIN BERGER**

**I, Dwaine G. Berger, declare as follows:**

1. I was employed by The Toro Company ("Toro") from December 2, 1966 to March 14, 2003. On March 14, 2003, I retired from Toro. I am 66 years of age.
2. I currently live at 309 2nd Street E., P.O. Box 162, Carlos, Minnesota 56319. My residence is approximately a 2 1/2 hours drive to St. Paul, Minnesota.
3. While at Toro, I worked in the Product Development Lab as a shop mechanic. I worked in this capacity for about 30 years. As a shop mechanic I worked with the product designers and engineers to build the prototypes and products according to the engineering specifications. I worked on Toro's commercial turf maintenance products, including Toro's GroundsMaster 3500-D, 4500-D and 4700-D products. It is my understanding that these are among the principal products Textron, Innovations, Inc. is accusing of patent infringement in this case.
4. Through my position at Toro, I have extensive factual knowledge related to the design, development, and construction of the GroundsMaster products. Examples of the areas of my factual knowledge are:

- a. The design, development and construction of the tractor;
  - b. The design, development and construction of the cutting units;
  - c. The various changes and modifications that were made to improve the design;  
and
  - d. Evolution of the product, including the evolution of the cutting units from reel to rotary cutting units.
5. It is my understanding that Toro is currently involved in a patent lawsuit with Textron Innovations, Inc. related to commercial turf mowers. I believe that because of my extensive factual knowledge regarding design, development and construction of the prototypes and products at issue, I may be asked to be a witness to testify at trial.
6. It would be very difficult and inconvenient for me to travel to Delaware to testify in this matter. My mother is 90 years of age and has health problems. I visit her a couple times a week to check on her. Because of my mother's condition, I would not travel to Delaware to testify in this matter. It would be much less of a personal burden for me to testify if trial is in Minnesota.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 15 day of August 2005.

  
Dwaine G. Berger

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**CERTIFICATE OF SERVICE**

I, David E. Moore, hereby certify that on August 16, 2005, the attached document was hand delivered to the following persons and was electronically filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following and the document is available for viewing and downloading from CM/ECF:

Edmond D. Johnson  
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I hereby certify that on August 16, 2005, I have Federal Expressed the documents to the following non-registered participants:

Scott L. Robertson  
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By: \_\_\_\_\_



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